

NOTICE OF AND CONSENT TO ASSIGNMENT OF MAINTENANCE OBLIGATIONS

This ASSIGNMENT OF MAINTENANCE OBLIGATIONS AGREEMENT (this “**Agreement**”), effective as of April 4, 2024, (the “**Effective Date**”), is entered into by and between the City and County of San Francisco (the “**City**”), operating by and through the San Francisco Port Commission (“**Port**” or “**Assignor**”), and FC Pier 70, LLC, a Delaware limited liability company (“**Assignee**”).

RECITALS:

A. The City and County of San Francisco Public Works (“**Public Works**”) and Port entered into that certain Intergovernmental Master Encroachment Permit entitled “Pier 70 Intergovernmental Master Encroachment Permit and Maintenance Agreement” dated as of _____ April 4 _____, 2024 (as may be amended or assigned from time to time, “**IMEP**”), for Lots A and C-F on the final subdivision map entitled “Final Map 9585”, recorded in the Official Records of the City and County of San Francisco on October 23, 2020 in Book 1 of Final Maps, Pages 94-103, inclusive, and Lots C, E, H, I, P, Q, W, X, and Z on that certain Final Transfer Map No. 9597, recorded in the Official Records of the City and County of San Francisco on February 7, 2019 in Book HH of Survey Maps at Pages 89-98, inclusive, all situated in the City and County of San Francisco, California (collectively, the “**Master Property**”). The Master Property is located within the mixed-use development commonly known as the Pier 70 Waterfront Site.

B. Pursuant to the IMEP, the maintenance obligations for the Improvements and the Sidewalks may be assigned, in whole or in part, subject to approval by the Director of Public works, among other requirements.

C. Assignor desires to assign its maintenance obligations for the Improvements and the Sidewalks (each as defined in the IMEP) to Assignee, and Assignee desires to assume all of Assignor’s maintenance obligations for the Improvements and the Sidewalks as set forth in the IMEP on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment by Assignor. Pursuant to Section 16.1 of the IMEP, Assignor hereby assigns the maintenance obligations listed below to Assignee as of the Effective Date.

1.1. Improvements and Sidewalks. Assignor assigns each and all of the maintenance obligations of Assignor under the IMEP for all of the Improvements and the Sidewalks, including Public Works Code Section 706 obligations, in the Permit Area (which currently includes only Phase 1, as defined in the IMEP) and as depicted on Attachment 1 (Pier 70 Phase 1 Area Map) attached to the IMEP.

1.2. Modification to Scope of Sidewalks. Upon the effective date of Board of Supervisors Ordinance No. 066-24 (amending Public Works Code Section 706 to designate Port long-term tenants as fronting property owners), the sidewalk within the portion of Louisiana Street that fronts Building 12 will be automatically removed from the IMEP and the scope of Assignee’s maintenance obligations, pursuant to IMEP Sections 4.2D and 16.2, without further amendment to this Agreement or Public Works Director approval required, but further subject to the future annexation procedures of Section 4.2E of the IMEP.

2. Assumption by Assignee.

Pursuant to Section 16.1 of the IMEP, Assignee hereby assumes from Assignor as of the Effective Date each and all of the maintenance obligations of Assignor under the IMEP for the Improvements and the Sidewalks in the Permit Area. Assignee hereby acknowledges that Assignee has reviewed the IMEP and agrees to be bound by the IMEP and all conditions and restrictions to which the Maintenance Assignee (as defined in the IMEP) is subject under the IMEP and any additional conditions required herein, including the Insurance provisions of Section 8 and Indemnification provisions of Section 25 thereof with respect to Assignee's assumption and performance of the maintenance obligations. Assignee represents and warrants that it has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the IMEP hereby assigned to it.

3. Term.

This assignment shall remain in effect until the expiration of the Phase 1 Maintenance Term, as defined in that certain Second Amendment to the Disposition and Development Agreement by and between Assignor and Assignee, dated as of the date hereof (the "**DDA Second Amendment**"). Unless the Phase 1 Maintenance Term, or Assignee's obligations under the DDA Second Amendment are otherwise extended by mutual written agreement of the parties thereto, each in their sole discretion, Assignor shall provide the Public Works Director with written notice of termination of this Maintenance Assignment within ten (10) days after the expiration of the Phase 1 Maintenance Term. If Assignor fails to provide such notice, Assignee may provide such notice on behalf of both Assignor and Assignee. In either case, the termination notice shall be retroactive to the Phase 1 Maintenance Term expiration date.

4. Additional Information Required Under IMEP.

4.1. Notice Address. Assignee's contact information, as required by Sections 2.7 (Contact Information) and 16.1 (Assignment) of the IMEP, is provided below.

Contact Person Number 1

Last Name, First Name: Bacon, Tim

Title/Relationship to Owner: V.P. Development, Commercial Development

Phone Numbers: (415) 593-4236

Email Addresses: tim.bacon@brookfieldpropertiesdevelopment.com

Mailing Address: Brookfield Properties
685 Market Street, Suite 500 , San Francisco, California 94105
Re: Pier 70

Office Address: Same as Mailing Address

Contact Person Number 2

Last Name, First Name: Dom DiTullio

Title/Relationship to Owner: Director Development, Commercial Development

Phone Numbers: (415) 593-4235

Email Addresses:	Dominic.DiTullio@brookfieldpropertiesdevelopment.com
Mailing Address:	Brookfield Properties 685 Market Street, Suite 500 , San Francisco, California 94105 Re: Pier 70
Office Address:	Same as Mailing Address

4.2. Community Facilities District Special Taxes. Community Facilities District Services Special Taxes will be used to fund obligations under the IMEP upon the levy of such taxes in the district. It is anticipated that Assignee will fund the obligations under the IMEP until such time as Community Facilities District Services Special Taxes are available, subject to reimbursement in accordance with the provisions of the DDA Second Amendment.

4.3. Insurance. On or prior to the Effective Date, Assignee must provide to Public Works a copy of its general liability insurance that satisfies the requirements of Section 8 of the IMEP and that also names the Port of San Francisco as an additional insured in the same manner and respect as the City of San Francisco.

4.4. Maintenance Fund or Security. For this assignment, based on the specific circumstances presented at the time of the assignment, it has been determined that Assignee will have no obligation to fund a maintenance fund or provide security to Public Works under Section 10 (Maintenance Fund and Security).

4.5. Third-Party Beneficiary. Public Works is an intended third-party beneficiary of the Insurance and Indemnification provisions.

4.6. Additional Conditions. Not applicable. The Public Works Director has not required any additional conditions on this assignment, except as may be set forth elsewhere in this Agreement.

4.7. Joint and Several Liability. As between Assignor and Assignee on the one hand, and Public Works on the other, Assignor and Assignee acknowledge that they are jointly and severally liable for the obligations under the IMEP. Notwithstanding the foregoing, as between Assignor and Assignee, the provisions of the DDA Second Amendment shall govern.

4.8. Non-Port Permittee. Assignee shall not be deemed a Non-Port Permittee, and shall solely serve as a Maintenance Assignee under the IMEP.

5. General Provisions.

5.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

5.2. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument.

5.3. Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

5.4. Amendment to Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto and written approval of the Public Works Director.

5.5. Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

5.6. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

5.7. Defined Terms. All capitalized terms not defined herein are set forth in the IMEP.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ASSIGNOR:

**The City and County of San Francisco
operating by and through the
San Francisco Port Commission**

DocuSigned by:

Ketan Patel

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By: _____
Name:

Title:

ASSIGNEE:

FC PIER 70, LLC, a Delaware limited liability

company:

Elaine Forbes

B02F0B693FFE43F...

By: _____
Name:

Title:

APPROVAL OF ASSIGNMENT

DocuSigned by:

Carla Short

073CF73A4EA6486...

Carla Short
Director of Public Works

DATE: 5/21/2024